

REMARKS

Entry of the foregoing amendments is respectfully requested. The Office Action dated July 28, 2006 vacated the restriction requirement set forth in the Office Action dated March 15, 2006 and set forth new a requirement for restriction between five inventions, grouping the pending claims into four Groups I-V. Applicants hereby elect, with traverse, Group III, comprising claims 17-24.

The restriction requirement further requires a sequence election, setting forth four groups A-D. Applicants hereby elect Group B, drawn to a polynucleotide of SEQ ID NO:2 or a sequence encoding SEQ ID NO:6.

By the present amendment, claims 17, 18, 25, 27, 32, and 33 have been amended to delete the word "selected," which referred to the listing of sequences in the original claims. Claims 17, 18, 25, 27, 32, and 33 now recite the elected sequences of Group B. Claims 25, 27, 32, and 33 have been amended to recite at least 21 contiguous nucleotides as described for example at paragraph [0052].

No prohibited new matter has been introduced by way of the above amendments. Applicants reserve the right to file a continuation or divisional application on subject matter canceled by way of this Amendment.

This restriction requirement further divides the former Group III into two groups, now numbered, III and IV. Applicants respectfully submit that the restriction requirement is improper for at least two reasons.

Firstly, it must be noted that the respective scopes of claims in these two groups overlap. For example, consider claims 17 and 25. Claim 25 includes chimeric genes having at least 21 contiguous nucleotides of a sequence encoding SEQ ID NO:6, which can include up to the full length of a polynucleotide encoding SEQ ID NO:6, which is within the scope of

claim 17. Therefore, the Office is improperly proposing to divide between claims having overlapping scope.

Secondly, both groups III and IV are directed to chimeric genes that are defined by reference to the elected sequences, SEQ ID NOS:2 and 6. Therefore, the search and examination of these claims must necessarily substantially overlap. As such, it can not be reasonably asserted that there would be a serious burden in examining these claims together. Therefore, in accordance with Manual of Patent Examination Procedure § 803, the restriction is improper.

Rejoinder of Groups III and IV is appropriate and respectfully requested.

Further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

In the event that there are any questions relating to this application, it would be appreciated if the Examiner would telephone the undersigned concerning such questions so that prosecution of this application may be expedited.

The Director is hereby authorized to charge any appropriate fees that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800.

Respectfully submitted,

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